

## SECTION VI

### CONTRACTING PROVISIONS

- 6.1. The U.S. Participant will be responsible for contracting for this Project in accordance with U.S. contracting laws, regulations and procedures. The U.S. DoD Contracting Officer is the exclusive source for providing contractual direction and instructions to Contractors. Prior to proceeding with each subsequent phase, the Participants will mutually determine the Contracting Agency for that phase.
- 6.2. The PFRMS PM will be responsible for the coordination of activities relating to the Project, and will cooperate with the Contracting Officer in the areas of Contract procedures, Contract negotiation, evaluation of offers, and Contract award. The PFRMS PM will review statements of work prior to the development of solicitations to ensure that they are in accordance with this Supplement. The Contracting Officer will not place any Contracts, or Contract modifications affecting cost, schedule, or performance, on behalf of the Participants without the written approval of both PMs.
- 6.3. The Contracting Officer will negotiate to obtain the rights to use and disclose Project Information required by Section IX (Disclosure and Use of Project Information). The Contracting Officer will insert into prospective Contracts (and require its Contractors to insert in subcontracts) suitable provisions to satisfy the requirements of this Supplement, including Section IX (Disclosure and Use of Project Information), Section X (Controlled Unclassified Information), Section XII (Security), and Section XIII (Third Party Sales and Transfers). During the Contracting process, the Contracting Officer will advise prospective Contractors of their responsibility to immediately notify the Contracting Agency, before Contract award, if they are subject to any license or agreement that will restrict their freedom to disclose information or permit its use. The Contracting Officer will also advise prospective Contractors to employ their best efforts not to enter into any new agreement or arrangement that will result in restrictions.
- 6.4. In the event the Contracting Officer is unable to secure adequate rights to use and disclose Project Information as required by Section IX (Disclosure and Use of Project Information), or is notified by Contractors or potential Contractors of any restrictions on the disclosure and use of information, the matter will be referred to the PMs for resolution.
- 6.5. The PFRMS PM will use its best efforts to ensure that it is specified in the Contract(s) that any FFCS Software specified as a contract deliverable will be delivered with the associated source code material and documentation. If the PFRMS PM is unable to secure such contract deliverables, the other Participant will be consulted on alternative terms prior to contract placement.

6.6. The Contracting Officer will immediately advise the PFRMS PM of any cost growth, schedule change, or performance problems of any Contractor for which the Contracting Officer is responsible.

6.7. Upon mutual consent, consistent with Section II (Objectives) a Participant may contract for the unique national requirements of the other Participant.

## **SECTION VII**

### **WORK SHARING**

- 7.1.** The work as described in Section III, Scope of Work, will be shared between the Participants where possible, based on Best Value.
- 7.2.** No requirement will be imposed by either Participant for work sharing or other industrial or commercial compensation in connection with this Supplement that is not in accordance with this Supplement.

## SECTION VIII

### PROJECT EQUIPMENT

8.1. Each Participant may provide Project Equipment identified as being necessary for executing the MOU Supplement to the other Participant. Project Equipment will remain the property of the providing Participant. A list of all Project Equipment provided by one Participant to another Participant will be developed and maintained by the PM, approved by the SC, and incorporated into Annex D (Inventory of Project Equipment Exchanges) in accordance with Section IV (Management) prior to such transfers.

8.2. The receiving Participant will maintain any such Project Equipment in good order, repair, and operable condition. Unless the providing Participant has authorized the Project Equipment to be expended or otherwise consumed without reimbursement to the providing Participant, the receiving Participant will return the Project Equipment to the providing Participant in as good condition as received, normal wear and tear excepted, or return the Project Equipment and pay the cost to restore it. If the Project Equipment is damaged beyond economical repair, the receiving Participant will return the Project Equipment to the providing Participant (unless otherwise specified in writing by the providing Participant) and pay the replacement value specified in Annex D (Inventory of Project Equipment Exchanges), which will be computed pursuant to the providing Participant's national laws and regulations. If the Project Equipment is lost while in the custody of the receiving Participant, the receiving Participant will issue a certificate of loss to the providing Participant and pay the replacement value specified in Annex D (Inventory of Project Equipment Exchanges).

8.3. The providing Participant will deliver Project Equipment to the receiving Participant at a mutually agreed location. Possession of the Project Equipment will pass from the providing Participant to the receiving Participant at the time of receipt of the Project Equipment. Any further transportation is the responsibility of the receiving Participant.

8.4. All Project Equipment that is transferred will be used by the receiving Participant only for the purposes of carrying out this MOU Supplement, unless otherwise consented to in writing by the providing Participant. In addition, in accordance with Section XIII (Third Party Sales and Transfers) Project Equipment will not be re-transferred to a Third Party without the prior written consent of the providing Participant.

8.5. Project Equipment transferred to one Participant under this MOU Supplement will be returned to the providing Participant prior to the termination or expiration of this MOU Supplement.

8.6. Any Project Equipment which is jointly acquired on behalf of both Participants for use under this MOU Supplement will be disposed of during this Project or when the Project ceases, as determined by the SC.

8.7. Disposal of jointly acquired equipment may include a transfer of the interest of one Participant in such Project Equipment to the other Participant, or the sale of such equipment to a Third Party in accordance with Section XIII (Third Party Sales and Transfers) of this MOU Supplement. The Participants will share the consideration from jointly acquired Project Equipment transferred or sold to a Third Party in the same ratio as costs are shared under this MOU Supplement.

## SECTION IX

### DISCLOSURE AND USE OF PROJECT INFORMATION

#### 9.1. General

Both Participants recognize that successful collaboration depends on full and prompt exchange of Information necessary for carrying out this Project. The Participants intend to acquire sufficient Information and rights to use such Information to enable the development, production, deployment, maintenance, and support of the upgraded M270 launcher. The nature and amount of Information to be acquired will be consistent with the objectives stated in Section II (Objectives), Section III (Scope of Work), Section VI (Contracting Provisions) and the operational requirements set forth in Annex A (System Requirements).

#### 9.2. Government Project Foreground Information

- 9.2.1. Disclosure: Project Foreground Information generated by a Participant's military or civilian employees will be disclosed without charge to both Participants.
- 9.2.2. Use: Each Participant may use all Government Project Foreground Information without charge for Defense Purposes. The Participant generating Government Project Foreground Information will also retain its rights of use thereto. Any sale or other transfer to a Third Party, will be subject to the provisions of Section XIII (Third Party Sales and Transfers) of this MOU Supplement.

#### 9.3. Government Project Background Information

- 9.3.1. Disclosure: Each Participant, upon request, will disclose to the other Participant any relevant Government Project Background Information generated by its military or civilian employees, provided that:
  - 9.3.1.1. such Project Background Information is necessary to or useful in the Project, with the Participant in possession of the information determining whether it is "necessary to" or "useful in" the Project;
  - 9.3.1.2. such Project Background Information may be made available without incurring liability to holders of proprietary rights; and
  - 9.3.1.3. disclosure is consistent with national disclosure policies and regulations of the furnishing Participant.

9.3.2. Use: Government Project Background Information disclosed by one Participant to the other may be used without charge by the other Participant for Project Purposes only; however, the furnishing Participant will retain all its rights with respect to such Project Background Information.

#### 9.4. Contractor Project Foreground Information

9.4.1. Disclosure: Project Foreground Information generated and delivered by Contractors, will be disclosed without charge to both Participants.

9.4.2. Use: Each Participant may use without charge for its Defense Purposes all Contractor Project Foreground Information generated and delivered by Contractors of the other Participant. The Participant whose Contractors generate and deliver Contractor Project Foreground Information will also retain rights of use thereto in accordance with the applicable Contract(s). Any sale or other transfer to a Third Party of Contractor Project Foreground Information, will be subject to the provisions of Section XIII (Third Party Sales and Transfers) of this MOU Supplement.

#### 9.5. Contractor Project Background Information

9.5.1. Disclosure: Any Project Background Information, (including information subject to proprietary rights) generated and delivered by Contractors will be made available to the other Participant provided the following provisions are met:

9.5.1.1. such Project Background Information is necessary to or useful in the Project, with the Participant in possession of the information determining whether it is "necessary to" or "useful in" the Project;

9.5.1.2. such Project Background Information may be made available without incurring liability to holders of proprietary rights; and

9.5.1.3. disclosure is consistent with national disclosure policies and regulations of the furnishing Participant.

9.5.2. Use: Project Background Information furnished by one Participant's Contractors and disclosed to the other Participant may be used without charge by the other Participant for Project Purposes only, and may be subject to further restrictions by holders of proprietary rights; however, the furnishing Participant

will retain all its rights with respect to such Project Background Information

#### 9.6. Alternative Uses of Project Information

- 9.6.1. Any Project Background Information provided by one Participant will be used by the other Participant only for the purposes set forth in this MOU Supplement, unless otherwise consented to in writing by the providing Participant.
- 9.6.2. The prior written consent of the DoD will be required for the use of Project Foreground Information by the MOD for purposes other than those provided for in this MOU Supplement.

#### 9.7. Proprietary Project Information

- 9.7.1. All Project Information subject to proprietary interests will be identified and marked, and it will be handled as Controlled Unclassified Information.
- 9.7.2. The provisions of the NATO Agreement on the Communication of Technical Information for Defence Purposes, done at Brussels on 19 October 1970, and the Implementing Procedures for the NATO Agreement on the Communication of Technical Information for Defence Purposes, approved by the North Atlantic Council on 1 January 1971, will apply to proprietary Project Information related to this MOU Supplement.

#### 9.8. Patents

- 9.8.1. Each Participant will include in all its Contracts a provision governing the disposition of rights in regard to Project Inventions and patent rights relation thereto, which either;
  - 9.8.1.1. Provides that the Participant will hold title to all Project Inventions together with the right to make patent application for the same, free of encumbrance from the Contractor; or
  - 9.8.1.2. Provides that the Contractor will hold title (or may elect to retain title) for Project Inventions together with the right to make patent applications for the same, while securing for the Participant a license for the Project Inventions, and any patents therefore, on terms in compliance with the provisions of paragraph 9.8.2. below.

- 9.8.2. In the event that a Contractor holds the title (or elects to retain title) for a Project Invention, the Contracting Participant will secure for both Participants non-exclusive, irrevocable, royalty-free licenses under all patents secured for the invention, to practice or have practiced the patented Project Invention for Defense Purposes throughout the world.
- 9.8.3. Where a Participant has or can secure the right to file a patent application with regard to a Project Invention, that Participant will consult the other Participant regarding the filing of such patent application. If a Participant, having filed or caused to be filed a patent application in the country of the other Participant, decides to stop prosecution of the application, that Participant will notify the other Participant of that decision and permit the other Participant to continue the prosecution.
- 9.8.4. Each Participant will be furnished with copies of the patent applications filed and patents granted with regard to Project Inventions.
- 9.8.5. Each Participant will grant to the other Participant a non-exclusive, irrevocable, royalty-free license under its patents for Project Inventions, to practice or have practiced the patented Project Invention for Defense Purposes throughout the world.
- 9.8.6. Patent applications which contain Classified Information, to be filed under this MOU Supplement, will be protected and safeguarded in accordance with the requirements contained in the NATO Agreement for the Mutual Safeguarding of Secrecy of Inventions Relating to Defense and for which Applications for Patents have been made, signed on 21 September 1960, and its Implementing Procedures.

## SECTION X

### CONTROLLED UNCLASSIFIED INFORMATION

10.1. Except as otherwise provided in this Supplement or as authorized in writing by the originating Participant, Controlled Unclassified Information provided or generated pursuant to this Supplement will be controlled as follows:

- 10.1.1. Such information will be used only for the purposes authorized for use of Project Information as specified in Section IX (Disclosure and Use of Project Information).
- 10.1.2. Access to such information will be limited to personnel whose access is necessary for the permitted use under subparagraph 10.1.1, and will be subject to the provisions of Section XIII (Third Party Sales and Transfers).
- 10.1.3. Each Participant will take all lawful steps, which may include national classification, available to it to keep such information free from further disclosure (including requests under any legislative provisions), except as provided in subparagraph 10.1.2, unless the originating Participant consents to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that the information may have to be further disclosed under any legislative provision, immediate notification will be given to the originating Participant.

10.2. To assist in providing the appropriate controls, the originating Participant will ensure that Controlled Unclassified Information is appropriately marked. The Participants will decide, in advance and in writing, on the markings to be placed on the Controlled Unclassified Information. The appropriate markings will be defined in the Program Security Instruction.

10.3. Controlled Unclassified Information provided or generated pursuant to this Supplement will be handled in a manner that ensures control as provided for in paragraph 10.1.

10.4. Prior to authorizing the release of Controlled Unclassified Information to Contractors, the Participants will ensure the Contractors are legally bound to control such information in accordance with the provisions of this Section.

## SECTION XI

### VISITS TO ESTABLISHMENTS

- 11.1. Each Participant will permit visits to its government establishments, agencies and laboratories, and Contractor industrial facilities by employees of the other Participant or by employees of the other Participant's Contractor(s), provided that both the hosting and originating Participants authorize the visit and the employees have any necessary and appropriate security clearances and a need-to-know.
- 11.2. All visiting personnel will be required to comply with security regulations of the hosting Participant. Any information disclosed or made available to visitors will be treated as if supplied to the Participant sponsoring the visiting personnel, and will be subject to the provisions of this Supplement.
- 11.3. Requests for visits by personnel of one Participant to a facility of the other Participant will be coordinated through the Project Management Office, and will conform with the established visit procedures of the host country. After approval in principle, a formal visit request forwarding the required certificate of security clearances will be transmitted to the host Participant. Requests for visits will bear the name of the FFCS Project, and will be submitted in accordance with International Visit Procedures.
- 11.4. Lists of personnel of each Participant required to visit, on a continuing basis, facilities of the other Participant will be submitted through official channels in accordance with recurring international visit procedures.

## SECTION XII

### SECURITY

12.1. All Classified Information exchanged or generated in connection with this Supplement will be used, transmitted, stored, handled, and safeguarded in accordance with the UK/U.S. General Security Agreement dated 14 April 1961, as amended and including the Security Implementing Arrangement dated 27 January 2003 thereto. Additionally all Classified Information exchanged or generated in connection with this FFCS Project will be protected in accordance with the jointly approved Security Classification Guide.

12.2. Classified Information will be transferred only through government-to-government channels or through channels approved by the National Security Authorities (NSAs)/Designated Security Authorities (DSAs) of the Participants. Such information will bear the level of classification, denote the country of origin, the provisions of release, and the fact that the information relates to the FFCS Project.

12.3. Each Participant will take all lawful steps available to it to ensure that Classified Information provided or generated pursuant to this FFCS Project is protected from further disclosure, except as permitted below, unless the other Participants consent to such disclosure.

Accordingly, each Participant will ensure that:

12.3.1. The recipient will not release the Classified Information to any government, national, organization or other entity of a Third Party without the prior written consent of the originating Participant in accordance with the procedures set forth in Section XIV (Sales and Transfers to Third Parties).

12.3.2. The recipient will not use the Classified Information for other than the purposes provided for in this MOU Supplement.

12.3.3. The recipient will comply with any distribution and access restrictions on information that is provided under this MOU Supplement.

12.4. The Participants will investigate all cases in which it is known or where there are grounds for suspecting that Classified Information provided or generated pursuant to this MOU Supplement has been lost or disclosed to unauthorized persons. Each Participant also will promptly and fully inform the other Participants of the details of any such occurrences, and of the final results of the investigation and of the corrective action taken to preclude recurrences.

12.5. The NSA/DSA of the country in which a classified contract is awarded will assume responsibility for administering within its territory security measures for the protection of the Classified Information, in accordance with its laws and regulations. Prior to the release to a contractor, prospective contractor, or subcontractor of any Classified Information received under this MOU Supplement, the NSAs/DSAs will:

- 12.5.1. Ensure that such Contractors, prospective contractors, or subcontractors and their facilities have the capability to protect the information adequately.
- 12.5.2. Grant a security clearance to the facilities, if appropriate.
- 12.5.3. Grant a security clearance for all personnel whose duties require access to Classified Information, if appropriate.
- 12.5.4. Ensure that all persons having access to the Classified Information are informed of their responsibilities to protect the information in accordance with national security laws and regulations, and the provisions of this MOU Supplement.
- 12.5.5. Carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected.
- 12.5.6. Ensure that access to the Classified Information is limited to those persons who have a need-to-know for purposes of this FFCS Project.

12.6. Contractors, prospective contractors, or subcontractors which are determined by the NSAs/DSAs to be under financial, administrative, policy or management control of nationals or entities of a Third Party may participate in a contract or subcontract requiring access to Classified Information provided or generated pursuant to this FFCS Project only when enforceable measures are in effect to ensure that nationals or entities of a Third Party shall not have access to Classified Information. If enforceable measures are not in effect to preclude access by nationals or other entities of a Third Party, the other Participants will be consulted for approval prior to permitting such access.

12.7. For any facility wherein Classified Information is to be used, the responsible Participant or Contractor will approve the appointment of a person or persons of sufficient rank to exercise effectively the responsibilities for safeguarding at such facility the information pertaining to the FFCS Project. These officials will be responsible for limiting access to Classified Information involved in this project to those persons who have been properly approved for access and have a need-to-know.

12.8. Each Participant will ensure that access to Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the Classified Information in order to participate in the FFCS Project.

12.9. Participants will prepare a Project Security Instruction and review and provide any additions to the existing MLRS Security Classification Guide within three months of signing this MOU Supplement. The Project Security Instruction and Guide will be forwarded to each Participant's DSA for approval. Upon approval, the Project Security Instruction and Guide will be applicable to all government and Contractor personnel participating in the FFCS Project and subject to regular review and revision.

12.10. Information or material provided or generated pursuant to this FFCS Project may be classified as high as SECRET and equivalent national classification levels. The existence of this MOU Supplement is unclassified and the contents are unclassified.

12.11. All Classified Information exchanged or generated under this MOU Supplement will continue to be protected in the event of withdrawal by any Participant or upon termination of this MOU Supplement.

## SECTION XIII

### THIRD PARTY SALES AND TRANSFERS

- 13.1. The U.S. Participant will retain the right to sell, transfer title to, disclose, or transfer possession of Project Foreground Information, jointly acquired Project Equipment, or the whole or the part of any item produced from Project Foreground Information to Third Parties.
- 13.2. The UK Participant will not sell, transfer title to, disclose, or transfer possession of Project Foreground Information, Project Equipment, or the whole or the part of any item produced from Project Foreground Information to any Third Party without the prior written consent of the U.S. Participant. Furthermore, the UK Participant will not permit any such sale, disclosure, or transfer by others, including the owner of the item, without the prior written consent of the U.S. Participant. The UK Participant recognizes that such sales, disclosures, or other transfers will not be authorized by the U.S. Government unless the government of the intended recipient consents in writing with the U.S. Government that it will:
  - 13.2.1. not retransfer, or permit the further retransfer of, any equipment or information provided; and
  - 13.2.2. use, or permit the use of, the equipment or information provided only for the purposes specified by the Participants.
- 13.3. A Participant will not sell, transfer title to, disclose, or transfer possession of Project Background Information or Project Equipment provided by the other Participant to any Third Party without the prior written consent of the Participant which provided such equipment or information. The providing Participant will be solely responsible for authorizing such transfers and, as applicable, specifying the method and provisions for implementing such transfers.
- 13.4. Notwithstanding the provisions of paragraph 9.3, the U.S. DoD M270A1 and HIMARS programs will be granted limited rights to use the UK MOD AT2 Special Purpose Application Processor (SPAP) software and the Auxiliary Power Supply Unit (APU) for Third-Party sales without payment of UK Government non-recurring cost recoupment fees or UK contractor licensing fees.

## **SECTION XIV**

### **LIABILITY AND CLAIMS**

**14.1.** Claims arising from this MOU Supplement will be dealt with under paragraph 1. of the Agreement Concerning Defense Cooperation Arrangements of 27 May 1993. Any cost sharing arrangements under paragraph 1 (b) (ii) of that Agreement will be the same as the cost shares specified in Section V (Financial Provisions).

## SECTION XV

### PARTICIPATION OF ADDITIONAL NATIONS

15.1. It is recognized that other national defense organizations may wish to join the FFCS Project.

15.2. Mutual consent of the Participants will be required to conduct discussions with other nations. The Participants will discuss the arrangements under which another nation might join, including the furnishing of releasable Project Information for evaluation prior to joining, and the contributions which have already been made by the Participants. If the disclosure of Project Information is necessary to conduct discussions, such disclosure will be in accordance with Section IX (Disclosure and Use of Project Information), Section X (Controlled Unclassified Information) and Section XIII (Third Party Sales and Transfers).

15.3. The Participants will jointly formulate the provisions under which additional nations might join. The addition of new nations to the FFCS Project will require amendment of this MOU Supplement by the Participants.